

## WHAT IS MY CASE WORTH?

There are a number of factors that go into determining the value of your case. First, it is important to understand the risks of going to trial vs. settling your claim out of court.

### **Should I settle or go to trial?**

Once your case is ready for settlement or litigation, you can proceed to resolve your case through a settlement or, if settlement is unsuccessful, through trial. The attorney may choose to send a letter to the defendant and/or the insurance adjuster making a demand for a payment of a particular amount of money to resolve the claim. If negotiations for settlement prove unsuccessful, the attorney and the client will discuss the client's options and will make a decision to either accept the final offer or put the case into suit and go to trial.

Litigation begins when the attorney serves a summons and complaint on the defendant. Then, the defendant will answer. Once the discovery phase of the case is completed, your case will likely proceed to mediation and at that time have another opportunity to settle the case before trial begins.

### **The following factors will help you to decide whether or not to take your case to trial:**

#### **1) How would a jury decide?**

The insurance companies win the majority of personal injury trials in Minnesota. Juries tend to find for the defendant between 55-60% of the time. So, in deciding whether to go to trial, it is important to be familiar with the strengths and weaknesses of your case not only from a legal perspective, but from the perspective of the average juror as well.

#### **2) How much insurance coverage is available?**

In almost all cases, you can recover only up to the amount of the liability coverage carried by the person who caused your injury. If you go to trial and the jury awards you, for example, \$50,000 but the defendant has only \$30,000 in liability coverage, you can only recover the \$30,000 that is available on that policy. An injured party can successfully sue for the defendant's assets only if the defendant has assets other than a home (primary residence). And, even if you are able to obtain a judgment against the at-fault defendant's personal assets, collecting on that judgment also poses its own set of difficulties since the court will not do that for you.

In the above example, you may also make a claim for underinsured benefits on your own policy to cover the \$20,000 shortfall.

### **3) How strong are your legal arguments for liability/negligence:**

Your attorney will be able to educate you on the strength of the legal arguments for your case. After the trial is completed the jury is brought into the jury room where they are given the following series of questions to answer:

- **Was the defendant negligent (at fault for the accident)?**

Being a member of society requires that we all act, drive, and maintain our vehicle in a responsible way. The jury must consider whether the defendant (at fault driver) breached his/her duty of acting responsibly to his/her fellow citizens. Driving through a red light is clearly a breach of that duty, hence negligence. A questionable case is when a driver rear-ends the car in front of him/her because the driver in front of them made a very sudden stop.

- **Was the plaintiff (you) in any way at fault or partially responsible for the accident?**

This concept is known as comparative fault. In Minnesota, a jury is asked to determine percentages of fault. For example, if they determine that the plaintiff has some degree of fault such as 15% and Defendant has 85%, the Judge is then required to deduct the 15% of Plaintiff's fault from the total award. However, if the jury attributes the plaintiff with 51% or more of the fault, the plaintiff loses the entire case and must pay the defendant's costs and expenses of having to go to trial.

- **Was the defendant's negligence what caused harm to plaintiff (you)?**

The jury must then decide whether the defendant's negligence (driving through a red light and hitting your vehicle) was the cause of plaintiff's injuries such as a broken arm.

- **What is the severity of the damage sustained by the plaintiff (you):**

1. Past and future medical treatment costs; the jury must consider past medical treatment expenses and if a doctor can document that you will need future medical treatment and can prove the cost of that treatment, those costs will be considered as part of your damages.
2. Past and future pain and suffering; pain and suffering is a subjective consideration of the injured person's claim that a jury will address.
3. Past and future lost wages; if you have missed a lot of time from work as a direct result of the injury, the loss of wages, both in the past and in the future will be considered in the value of your claim.

### **4) Trial is a very lengthy process and can be very stressful for some plaintiffs and their families.**

If you take your case to trial you will need to go through the long and arduous process of litigation. You will need to have your deposition testimony taken before trial, and, at trial, you

will need to testify on the witness stand. The defendant will do everything they can to discredit you and your testimony, which can be very difficult and stressful.

**5) There can be a number of adverse consequences for plaintiffs that choose not to settle their case and take it to trial instead, even if they “win” at trial.**

The Minnesota legislature has devised several ways to prevent a plaintiff from bringing a frivolous lawsuit. These series of laws are known as tort reform laws. Plaintiffs in Minnesota have some of the most severe consequences of any state if they lose at trial and these tort reform laws act as effective deterrents to bringing unworthy claims. The following are rules that must be considered before deciding to go to trial:

- **Collateral Source Rule:**

Minnesota law requires the Judge to deduct from the jury verdict award all of the collateral source payments (all other sources of benefits that have been contributed to your care as a result of this accident). Collateral source payments consist of the following:

1. All no-fault benefits received;
2. All contributions made by your health or dental insurance to pay for your medical care;
3. Worker’s compensation payments your received for your injuries if the incident occurred at work;
4. Disability payments not directly purchased by you.

- **Health insurance subrogation right:**

If your health insurer has covered any of your medical expenses as a result of this accident, the law allows them to be reimbursed in full unless they fall into an exception. The exception is found in Minn. Stat. 62A.095, Subd. 2(1), which provides that a subrogated medical provider cannot receive reimbursement until the covered person has received “full recovery.” By law, such reimbursement must be paid out of your share of the recovery.

- **Rule 68 Offer of Judgment:**

Sometimes the plaintiff can lose at trial even if he/she wins at trial. By law, before trial begins, the defendants can make a formal written Offer of Judgment (final settlement offer) to the plaintiff, pursuant to Civil Procedure Rule 68 in order to settle the case. The plaintiff can refuse to accept the Offer Of Judgment and choose to go to trial. However, the plaintiff must net a total award (after comparative fault and collateral source deductions mentioned above) greater than that Offer of Judgment to win their case.

For example, if the plaintiff wins at trial but the jury award, after the deductions for comparative fault and the other collateral sources, results in an amount less than the Offer of Judgment made to the plaintiff, the plaintiff will collect nothing and, in fact, be forced to pay to the defendant all of his/her costs and expenses to try the case.

**Example:**

1. **\$10,000 Offer of Judgment (Made by Defendant Prior To Trial)**  
**\$9,500 Jury Award**

The jury award is \$500 less than Offer of Judgment. As a consequence, according to the rule, the plaintiff has lost the trial and will have to pay defendant's costs and expenses.

**6) Loss at trial requires reimbursement of defendant's case expenses:**

When plaintiffs lose at trial they must pay all the defendant's costs and expenses (case expenses). When plaintiffs lose a personal injury case against an insured defendant, the insurance companies routinely obtain such a judgment against the plaintiff for their costs and expenses of the case regardless of the plaintiff's financial situation. In addition, if the plaintiff loses at trial, he/she, depending on the agreement with their attorney, may also have to pay their own case costs/expenses incurred during the litigation. Case expenses and costs go up drastically once a case goes to trial. For instance, you will need to retain an expert to testify on your behalf, which often costs as much as \$3,000.

**7) It is important to consider the reality of what your award and risks look like if you settle versus go to trial.**

**Below are some sample calculations to illustrate a plaintiff's take home award with settlement vs. trial:**

Needless to say, going to trial with these severe consequences for losing should make all plaintiffs carefully consider the advantages of settlement. The following sample calculations have been put together to show the difference between what a plaintiff can expect to get at trial versus what he/she may take home in the case of settlement.

Assume the following:

1. Liability insurance limit (defendant's total insurance coverage) is \$30,000.
2. Liability insurance adjuster has offered \$15,000 to settle your case.
3. Plaintiff (you) will be found 5% of fault by a jury.
4. Plaintiff (you) has been paid some collateral sources, as follows:

**COLLATERAL SOURCES PAID**

1. Health insurance paid – \$1,200
2. Work Comp/Disability payments paid – \$ 1,000
3. No-fault benefits paid – \$ 5,000
4. **Total Collateral Sources paid- \$ 7,200**

5. Plaintiff's (your) case expenses are as follows:
  1. Case expenses before trial starts – \$ 800
  2. Case expenses after trial – \$ 5,000
6. If you go to trial you will obtain a **JURY VERDICT** of \$30,000
7. THE FOLLOWING DEDUCTIONS WILL BE TAKEN FROM YOUR JURY AWARD VERDICT
  1. 5% Comparative Fault – \$1,500
  2. All Collateral Sources Deducted – \$7,200
  3. Attorney's Fees of 1/3 of the \$30,000 verdict -\$10,000
  4. Case Expenses -\$5,000
  5. **Total Deductions – \$23,700**

**LEAVING A NET AWARD TO PLAINTIFF (YOU) OF: \$6,300**

8. IF YOU ACCEPT THE SETTLEMENT OFFER OF \$15,000
  1. Attorney's Fees of 1/3 of the settlement of \$15,000 – \$5,000
  2. Health Insurance To Be Paid Back (Subrogation) – \$1,200
  3. Worker's Comp Payments – \$1,000
  4. Case Expenses -\$800
  5. **Total Deductions – \$8,000**

**LEAVING A NET TO PLAINTIFF (YOU) OF: \$7,000**

In the case of settlement, plaintiff does not have to deduct any collateral sources or percentage of fault from the settlement. However, health insurance payments and worker's comp payments must still be reimbursed so they are deducted anyway. Plaintiff receives a net award almost as much as he/she would at trial without the risks and without the 5% deduction of comparative fault or the deduction for no-fault benefits of \$5,000.

While there are circumstances where trial is appropriate, it is important to fully understand the reality of the risks associated with trial in order to best weigh whether or not it is the best course of action for you, your family and the outcome of your claim. Your attorney will explain these risks in greater detail as they relate to your specific case.